



4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2012-0033]

Notice of Intent to Grant a Buy America Waiver to the New York Metropolitan Transportation Authority for the Use of Transponders and Temporary Speed Restriction Safety Servers

AGENCY: Federal Railroad Administration (FRA), United States Department of Transportation (DOT).

ACTION: Notice of intent to grant Buy America waiver.

SUMMARY: FRA is issuing this notice to advise the public that it intends to grant the New York Metropolitan Transportation Authority (MTA) on behalf of its commuter railroad subsidiaries, Long Island Rail Road (LIRR) and Metro-North Commuter Railroad Company (Metro-North), a waiver from FRA's Buy America requirement for the use of (a) transponders and (b) Temporary Speed Restriction (TSR) safety servers, which are made in Sweden. Transponders and TSR safety servers are two components of LIRR's and Metro-North's Positive Train Control system (PTC). The two non-domestic components represent approximately 1% of the \$428 million total value of the contracts Metro-North and LIRR entered into with a system integrator to design and furnish PTC (PTC Contracts). The TSR safety servers cost less than \$1 million and the transponders approximately \$4 million. FRA anticipates funding the PTC Contracts, and other PTC-related projects, under a \$967.1 million FRA Railroad Rehabilitation & Improvement Financing loan.

DATES: Written comments on FRA's determination to grant MTA's Buy America waiver request should be provided to the FRA on or before [INSERT DATE 5 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FRA-2012-0033. All electronic submissions must be made to the U.S. Government electronic site at <http://www.regulations.gov>. Commenters should follow the instructions below for mailed and hand-delivered comments.

(1) Web Site: <http://www.regulations.gov>. Follow the instructions for submitting comments on the U.S. Government electronic docket site;

(2) Fax: (202) 493-2251;

(3) Mail: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M-30, Room W12-140, Washington, DC, 20590-0001; or

(4) Hand Delivery: Room W12-140 on the first floor of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the "Federal Railroad Administration" and include docket number FRA-2012-0033. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or

alteration to <http://www.regulations.gov>. For more information, you may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477), or visit <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. John Johnson, Attorney-Advisor, FRA Office of Chief Counsel, 1200 New Jersey Avenue, SE., Mail Stop 25, Washington, DC 20590, (202) 493-0078, John.Johnson@dot.gov.

SUPPLEMENTARY INFORMATION:

The letter granting MTA's request is quoted below:

Mr. Richard L. Gans
Vice President – General Counsel & Secretary
Long Island Rail Road
Jamaica Station
Jamaica, NY 11435-4380

Re: Request for Waiver of Buy America Requirement

Dear Mr. Gans:

As you are aware, on February 19, 2015, the New York Metropolitan Transportation Authority (MTA) on behalf of its commuter railroad subsidiaries, Long Island Rail Road (LIRR) and Metro-North Commuter Railroad Company (Metro-North), requested a waiver from the Federal Railroad Administration's (FRA) Buy America requirement to purchase (a) transponders and (b) Temporary Speed Restriction (TSR) safety servers for use in LIRR's and Metro-North's Positive Train Control system (PTC). The Rail Safety Improvement Act of 2008 requires certain railroads, including LIRR and Metro-North, to implement a PTC system on all nonexempt commuter main-line tracks by December 31, 2015. Facilitating PTC implementation is one of FRA's top priorities.

MTA requested the waiver, stating that the components were not produced in the U.S. in sufficient and reasonably available amounts or are not of a satisfactory quality. The transponders and TSR safety servers are manufactured in Sweden. The two non-domestic components represent approximately 1% of the total value of the PTC system integrator contracts (PTC Contracts). MTA values the TSR safety servers at less than \$1 million and the transponders at

approximately \$4 million. Total contract costs are approximately \$428 million. For the reasons set forth below, FRA is granting a waiver for the purchase of the transponders and TSR safety servers.

A waiver is appropriate because domestically-produced transponders and TSR safety servers meeting MTA's technical and schedule requirements are not currently "produced in sufficient and reasonably available amount or are not of a satisfactory quality." Coordinating with FRA, MTA engaged the U.S. Department of Commerce's National Institute of Standards and Technology's Hollings Manufacturing Extension Partnership (NIST-MEP) to conduct market research for the transponders and TSR safety servers. In conducting that research, MTA contacted several potential manufacturers identified by NIST-MEP. None produced the transponders or TSR safety servers.

On February 20, 2015, FRA provided public notice of this waiver request and a 15-day opportunity for comment on its website. FRA also emailed notice to over 6,000 persons who have signed up for Buy America notices through "GovDelivery." See <http://www.fra.dot.gov/Page/P0784>. FRA received one comment, which was not responsive to this waiver request. FRA will publish this letter granting MTA's request in the Federal Register and provide notice of such finding and an opportunity for public comment after which this waiver will become effective.

Question about this letter can be directed to, John Johnson, Attorney-Advisor, at John.Johnson@dot.gov or (202) 493-0078.

Sincerely,

Sarah Feinberg
Acting Administrator

Issued in Washington, DC on April , 2015.

Melissa L. Porter,
Chief Counsel.

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